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**BZA-1859**  
**KREAGER BROTHERS EXCAVATING, INC.**  
**Special Exception**

**STAFF REPORT**  
**June 21, 2012**

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**REQUEST MADE, PROPOSED USE, LOCATION:**

Petitioner, with consent of the owner, R. Gregg Sutter, and represented by Vester and Associates, is requesting approval of a third special exception to permit a mining operation (SIC 14) and approve its reclamation plan. The first special exception, approved in May 2010 (BZA-1796) permitted mining from 7 a.m. until 5 p.m. Monday through Friday, May 31, 2010 until June 1, 2011; the second extended mining until May 2012. This third special exception would extend active mining—*which has not yet begun*—until June 30, 2013. The proposed operation is located in the AW (Agricultural Wooded) and the FP (Flood Plain) zones and is located on CR 200 S (Haggerty Lane) where CR 750 E intersects, just south of Fairfield Lakes in Sheffield 4 (NE) 22-3. (UZO 3-2)

**AREA ZONING PATTERNS:**

This site is zoned FP and AW; most of the mining will take place in the flood plain. The zoning to the east is AW and to the west is FP. The FP zoning is associated with the south fork of the Wildcat Creek. A Rural Estate (RE) zone is located farther to the east.

**AREA LAND USE PATTERNS:**

Portions of this site have been in row crop production in previous years. The area in the request that will not be part of the pond will either be seeded or returned to crop production. A riparian buffer is located west along the Wildcat Creek; this use will not disturb the buffer.

Residential areas are located east of this site (Haggerty Hollow Rural Estate) and farther northeast along CR 200 S is the Haggerty Hills development.

This area of the county is sprinkled with ponds and lakes from previous mining operations. Fairfield Lakes, a county park facility, is located north across CR 200 S and a large lake can be found west across the Wildcat Creek. This area of the county has seen approval of seven (BZA-98, 283, 284, 645, 726, 1556, and 1730) and denial of two (BZA-195 and 367) mining special exceptions. As evidenced by these requests, this area is rich in aggregate.

The most recent special exception, BZA-1730, was granted in December of 2006 for a 10 acre borrow pit on the Chamberlain Farms property located a half mile east along CR 200 S. That site was similar in nature to the site in question and was approved for less than a year of mining.

**TRAFFIC AND TRANSPORTATION:**

CR 200 S is classified as a rural secondary arterial in the *Thoroughfare Plan*. Traffic counts taken in 2008 between CR 750 W and Dayton Road show an ADT (Adjusted Daily Total) of

3100. CR 200 S will be the only access for trucks to the site.

The County Highway Department has told APC of its approval of the location of the driveway but the driveway itself will need to be elevated for visibility over the Wildcat Creek bridge guardrail; driveway concerns will be addressed through a formal County Highway driveway permit. County Highway also needs to approve the route of truck traffic and petitioner must submit a bond for road maintenance.

**ENVIRONMENTAL AND UTILITY CONSIDERATIONS:**

Petitioner will need to clear a drive from CR 200 S to the borrow pit. A permit from the Indiana Department of Natural Resources, Division of Water has been received for the route to the site that will go through the floodway. A permit for mining from the Army Corps of Engineers was also received and is valid through December 2014.

The Unified Zoning Ordinance Amendment 61, adopted in response to a large number of temporary mining operations (those lasting 12 months or less) associated with the construction of the Hoosier Heartland, eliminated the bufferyard requirement and permitted a woven-wire farm field fence surrounding temporary mining operations. The site plan shows that the required fence is in an appropriate location.

The wetlands on the site are not being disturbed; any disturbance would need an additional approval from the Army Corps of Engineers and/or Indiana Department of Environmental Management.

**STAFF COMMENTS:**

If approved, mining can begin immediately and must cease on June 30, 2013, as stated in the petition. This operation is considered “temporary” because mining will be completed in less than 12 months.

There will be no lighting on the site. The operating hours are 7 a.m. to 5 p.m. and days of operation are Monday through Friday. All mining activities will take place out of the flood plain, including staging and stockpiling, and will be completed by June 30, 2013.

The reclamation plan indicates the slope of the pond will the requirements of the ordinance. When mining is complete all slopes along the pond will be seeded. The staging areas that are not mined will return to agricultural production. Petitioner has to complete the reclamation plan after mining ceases.

The proximity to previous mining cases shows staff that this area is rich in aggregate. The site is also in close proximity to major development occurring on the east side of Lafayette. Being closer to development is beneficial to both petitioner and the county: petitioner will save on fuel costs and the county will have fewer miles of road to monitor for deterioration from heavy truck traffic.

At its meeting on June 6, 2012, the Executive Committee of the Area Plan Commission voted that granting this request would not substantially adversely affect the Comprehensive Plan.

Regarding the ballot items:

1. Section 3.1 of the Unified Zoning Ordinance **DOES** authorize the special exception for this use (SIC 14 – mining of non-metallic minerals) in the AW and FP zoning districts.

And it is staff's opinion that:

2. The requirements and development standards for the requested use as prescribed by the Unified Zoning Ordinance **WILL** be met. The fence is shown, bufferyards are not required and setbacks are met.
3. Granting the special exception **WILL NOT** subvert the general purposes served by the Ordinance. This area of the county has generally been deemed acceptable for mining based on the previous approval of 7 mining cases. This operation does not pose a threat to adjacent property owners because this site is a minimum of 700' from all current homes and 600' from CR 200 S. In addition it is surrounded by a natural buffer of mature trees to the north, east and west. And finally, County Highway will make sure the driveway entrance is safe for trucks and oncoming traffic.
4. Granting the special exception **WILL NOT** materially and permanently injure other property or uses in the same district and vicinity because of:
  - a. Traffic generation: 32 truck loads per day from the site plus four employees will be generated by the mining operation. County Highway will require road maintenance bonds and that the entry onto the county road is as safe as possible. These requirements will ensure both a safe driveway entrance and continued help maintaining road conditions.
  - b. Placement of outdoor lighting: No outdoor lighting is proposed.
  - c. Noise production: The noise associated with this use will be produced by excavating equipment and truck traffic. Noises created by this use were deemed acceptable by virtue of the Board's approval of this same request at this site last year. Nothing has changed significantly in this area.
  - d. Hours of operation: Hours will be 7 a.m. until 5 p.m. Monday through Friday. These hours are typical working hours for this use.

**STAFF RECOMMENDATION:**

Approval with the following conditions:

1. The reclamation plan shall comply with UZO Section 4-11-4-a-3 regarding soil erosion and sediment control;
2. County Highway Department requirements include: driveway permit, truck route approval and maintenance bond;
3. A bond in the amount of \$3000 per acre of disturbed land be submitted to the APC; and
4. The BZA-approved reclamation plan must be recorded.

Note: A special exception approval ceases to be valid if the use is not established within one year of the date that the special exception was granted.